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DRAFT OPERATION IRON TRIANGLE AR 15-6 REPORT

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INVESTIGATION CHRONOLOGY

26 May 2006: Received appointment letter. Met with the CID commander, LTC (b)(3), (b)(6) the legal advisor, LTC (b)(3), (b)(6) for an initial briefing. Reviewed background materials and began planning investigation.

27 May 2006: Met with SA (b)(3), (b)(6) and LTC (b)(3), (b)(6) to compile a list of witnesses and questions.

27 May 2006: Requested that 101 AA coordinate the interviews of 3-320 FA witnesses at FOB Remagen. Requested information on Operation Iron Triangle from 101 AA and 3-320 FA. Moved to FOB Remagen with PSD, SA (b)(3), (b)(6) LTC (b)(3), (b)(6) and SSG (b)(3), (b)(6) (court reporter).

27 May 2006: Given a copy of an on-going AR 15-6 investigation being conducted by the 3-320 FA XO, MAJ (b)(3), (b)(6). The focus of MAJ (b)(3), (b)(6) inquiry was the death of three detainees during Operation Iron Triangle.

28 May 2006: Interviewed and took sworn testimony from MAJ (b)(3), (b)(6) SPC (b)(3), (b)(6) 1LT (b)(3), (b)(6) PFC (b)(3), (b)(6) SFC (b)(3), (b)(6) 1SG (b)(3), (b)(6) SGT (b)(3), (b)(6) 1SM (b)(3), (b)(6) LTC (b)(3), (b)(6) and PVT (b)(3), (b)(6). These interviews were documented as verbatim transcripts.

28 May 2006: Requested that 101 AA coordinate the interviews of 3rd Brigade witnesses at Speicher. Moved to Speicher with investigative team.

29 May 2006: Interviewed and took sworn testimony from MAJ (b)(3), (b)(6) TSG (b)(3), (b)(6) MAJ (b)(3), (b)(6) CW3 (b)(3), (b)(6) PFC (b)(3), (b)(6) CPT (b)(3), (b)(6) MAJ (b)(3), (b)(6) MAJ (b)(3), (b)(6) and CPT (b)(3), (b)(6). These interviews were documented as verbatim transcripts.

29 May 2006: Moved to Victory Base Complex with PSD, LTC (b)(3), (b)(6) and SSG (b)(3), (b)(6). Left CID agents at Speicher to continue with their independent criminal investigation into the deaths of Iraqis during Operation Iron Triangle.

31 May 2006: Met with LTC (b)(3), (b)(6) to review interview transcripts, consider calling additional witnesses and draft questions for COI (b)(3), (b)(6).

31 May 2006: Received a Legal Opinion from MAJ (b)(3), (b)(6) ref. theatre-specific ROE for status based kill/capture determinations for designated terrorist organizations.

01 June 2006: Received a copy of the completed 3BCT 15-6, dtd 21 May 2006, and legal review of the 15-6, dtd 01 June 2006 from MAJ (b)(3), (b)(6).

03 June 2006: Moved to FOB Speicher. Interviewed and took sworn testimony from COI (b)(3), (b)(6).

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04 June 2006: Met with LTC (b)(3), (b)(6) to draft findings and recommendations.

XX June 2006: Completed findings and recommendations.

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SECTION IV. FINDINGS:

Summary:

COL (b)(3), (b)(6) did not condone or attempt to cover up detainee deaths that occurred during Operation Iron Triangle. The facts and circumstances surrounding the deaths of three detainees, who were reported to have broken their restraints and assaulted their guards, continues to be the subject of an on-going criminal investigation.¹

The allegation that on or about 9 May 2006 COL (b)(3), (b)(6) posed for pictures with dead detainees; maltreated dead bodies; cut the blindfold and zip tie off of a dead detainee, and stated, "I guess we'll have to say these guys tried to escape" or words to that effect; complimented, endorsed or encouraged the mistreatment of detainees by saying "good job but we need more bodies" or words to that effect; and failed to report the death of detainees to higher headquarters, has been thoroughly investigated.

The bulk of the allegation has proven to be completely false. It is true that COL (b)(3), (b)(6) supervised the photographing of four bodies, and did cut a blindfold from one body. This, however, was done in order to take official photographs for use in positively identifying the bodies.² COL (b)(3), (b)(6) did intentionally delay reporting the deaths, but his intent was to gather facts from eye witnesses prior to notifying his higher headquarters. COL (b)(3), (b)(6) intent is clearly documented by the fact that a commander's inquiry was initiated almost immediately and was followed, within 48 hours, by an AR 15-6 investigation initiated by COL (b)(3), (b)(6).

Background:

On 9-11 May 2006, units from 3d Brigade Combat Team, 101st Airborne Division (3-187 IN, 3-320 FA, 2-9 IN) and 4th Iraqi Army Division participated in Operation Iron Triangle in the vicinity of Muthana, Iraq.⁴

On the first day of the operation seven Iraqis were killed. Three individuals in a boat in vicinity of OBJ Murray were engaged by fires from a helicopter. Their bodies fell into fast moving water and were not recovered. SSG (b)(3), (b)(6) a Charlie Company, 3-187 IN, shot and killed a man through a window on objective Murray. CPL (b)(3), (b)(6) and PFC (b)(3), (b)(6) members of SSG (b)(3), (b)(6) squad, shot and killed three detainees on objective Murray. These four bodies were collected and transported to the 3-320 FA TAC.⁵

¹ See exhibit 24.

² See exhibit 17, 22 and 25.

³ See exhibit 4, 21, 23 and 25.

⁴ See exhibit 2.

⁵ See exhibit 23.

At dawn on 9 May 2006, the 3d Brigade Commander, COL (b)(3), (b)(6) was with Charlie Company 3-187 IN as it moved into objective Murray. Objective Murray is an island and consisted of multiple small objectives. COL (b)(3), (b)(6) was on the southern most objective, while SSG (b)(3), (b)(6) CPL (b)(3), (b)(6) and PFC (b)(3), (b)(6) were at the northern objective. At about 0730 hours, COL (b)(3), (b)(6) and members of his Brigade staff moved by Blackhawk helicopter to the 3-320 FA TAC. While there they learned of the enemy KIA and saw the first of four dead bodies. At the direction of COL (b)(3), (b)(6) MAJ (b)(3), (b)(6) took three photos of the man shot through the window. About 45 minutes later three more bodies were delivered to the TAC. COL (b)(3), (b)(6) noticed the blindfolds. Other witnesses report that these later three bodies all had blindfolds and zip ties on them. At the direction of COL (b)(3), (b)(6) MAJ (b)(3), (b)(6) took four photos of the bodies.⁶

On 9 May 2006, the Commander of C Company, 3-187 IN, CP (b)(3), (b)(6) initiated a commander's inquiry into the deaths of the three detainees killed on OBJ Murray. CPT (b)(3), (b)(6) completed his inquiry on 11 May 2006 and concluded that his two Soldiers, CPL (b)(3), (b)(6) and PFC (b)(3), (b)(6) shot and killed the three detainees after being attacked by them. The facts and circumstances surrounding the deaths of these three men is the subject of an on-going CID investigation.⁸

The 3d Brigade Commander, COL (b)(3), (b)(6) was aware of the preliminary commander's inquiry that CP (b)(3), (b)(6) conducted at the direction of LTC (b)(3), (b)(6) On 11 May 2006, COL (b)(3), (b)(6) appointed MAJ (b)(3), (b)(6) the XO of 3-320 FA, to conduct an AR 15-6 investigation into the deaths of the three men. MAJ (b)(3), (b)(6) gave sworn testimony and has provided his completed report to this investigation.⁷ COL (b)(3), (b)(6) went on previously scheduled environmental leave after reviewing MAJ (b)(3), (b)(6) preliminary findings and determining that it did not appear that a LOAC violation had occurred. COL (b)(3), (b)(6) told his staff that the investigation was to remain in-house until he returned from leave on or about 1 June 2006.¹⁰ COL (b)(3), (b)(6) directive to his staff was based on his intention to personally brief his division commander once back from leave.¹¹

On 15 May 05, PVT (b)(3), (b)(6) a medic assigned to HHB, 3-320 FA, sent an email to his recruiter, SFC (b)(3), (b)(6) in CONUS. PVT (b)(3), (b)(6) alleged that during Operation Iron Triangle:

- Unknown soldiers from 3-187 Infantry shot four detainees while blindfolded and zip-tied.
- PVT (b)(3), (b)(6) was told to cut off the zip ties and say the detainees had been killed as they tried to escape.

⁶ See exhibit 17, 22 and 25.

⁷ See exhibit 23.

⁸ See exhibit 24.

⁹ See exhibit 4.

¹⁰ See exhibit 4, 21 and 25.

¹¹ See exhibit 25.

- PVT (b)(3), (b)(6)¹² indicated that this was the second time this has happened with same infantry company.

On 16 May 2006, SFC (b)(3), (b)(6) went to CID at Fort Riley and gave a sworn statement.¹³ CID at Fort Riley contacted CID in Baghdad. On 22 May 05, PVT (b)(3), (b)(6) gave a more detailed statement to CID agents at FOB Remagen, alleging the following:

- PVT (b)(3), (b)(6) worked during the operation at a jump aid station in the TAC providing care to about 100 detainees. He claimed that during the operation six bodies were brought into the area by Blackhawk. He said he saw only two bodies outside the bags; they were blind-folded with engineer tape and had their hands zippered behind their backs. One body had two gunshot wounds to the chest and one to the head; the other had a severe head wound.

- PVT (b)(3), (b)(6) alleged that the 3d Brigade Commander, COL (b)(3), (b)(6) lifted the head of one dead body, dropped it, cut off one of the blind-folds and flex cuffs, put his boot on the head and posed for a picture saying words to the effect of "I guess we'll have to say these guys tried to escape." PVT (b)(3), (b)(6) stated that 2 to 3 photos were taken. About 10 people were standing around the bodies at the time. The bodies were then placed in a hole near the TAC.

- PVT (b)(3), (b)(6) says he tried to talk to several soldiers and NCOs about whether the detainees were shot after being detained and was told in so many words not to worry about it. The next day the battalion XO, MAJ (b)(3), (b)(6) came to the aid station looking for the photos. PVT (b)(3), (b)(6) said this happened after he heard something about a CID investigation being started.¹⁴

Unaware of the commander's inquiry and 15-6 investigation initiated within 3BCT, on 26 May 2006 MNC-I directed an informal AR 15-6 investigation into the facts and circumstances surrounding the conduct of COL (b)(3), (b)(6) with regard to persons detained during Operation Iron Triangle.

From 26 May - 03 June 2006, the investigating officer, BG Thomas Maffey, personally interviewed 18 witnesses and reviewed the sworn statements taken during the initial commander's inquiry and Brigade level AR 15-6 investigation. BG Maffey also reviewed documentary evidence to include operation orders, after action reviews, applicable rules of engagement and orders, and digital photos. Overwhelmingly, the investigation exonerated COL (b)(3), (b)(6). COL (b)(3), (b)(6) testimony was corroborated by documentary evidence and other witnesses' sworn testimony. PVT (b)(3), (b)(6) testimony was not credible; it was not only uncorroborated,¹⁵ it was largely contradicted.¹⁶ From

¹² See exhibit 13a.

¹³ See exhibit 14.

¹⁴ See exhibit 13b.

¹⁵ PVT (b)(3), (b)(6) was the only witness to claim that COL (b)(3), (b)(6) said, "I guess we'll have to say these guys tried to escape" or "good job but we need more bodies." He was also the only witness to claim that COL (b)(3), (b)(6) stepped on and disrespected the bodies. No other witness described heavy duty zip ties, or hands bound behind the detainees' backs.

his original allegations in e-mail to SFC (b)(3), (b)(6) to his sworn statement to CID,¹⁸ to his sworn testimony to this investigation,¹⁹ PVT (b)(3), (b)(6) story did not remain consistent.²⁰

Specifically, the AR 15-6 investigation was directed to answer the following questions that are highlighted in bold:

a. Did COI (b)(3), (b)(6) pose for pictures with dead detainees?

COI (b)(3), (b)(6) did not pose for pictures with dead detainees. Based primarily on the testimony of MAJ (b)(3), (b)(6) and MAJ (b)(3), (b)(6) this investigation is confident that it has acquired all photographs taken of the bodies while COI (b)(3), (b)(6) was present. COI (b)(3), (b)(6) did lift the head of the man shot through the window so that MAJ (b)(3), (b)(6) could get a clear head and shoulder picture for use by the S-2 to positively identify the remains. MAJ (b)(3), (b)(6) did use his boot to keep the body bags down while MAJ (b)(3), (b)(6) photographed two of the detainee bodies. In one of these photos, MAJ (b)(3), (b)(6) used his foot to keep the head facing the camera. There is no doubt that these photos were head and shoulder shots taken to use in positively identifying the remains.

b. Did COI (b)(3), (b)(6) maltreat dead bodies?

COI (b)(3), (b)(6) did not maltreat dead bodies. The only witness who claimed that COI (b)(3), (b)(6) stepped on bodies is PVT (b)(3), (b)(6). It is noteworthy that in his initial e-mail message to SFC (b)(3), (b)(6) PVT (b)(3), (b)(6) claimed that he was ordered to remove the blindfolds and zip ties.²¹ In his sworn statement to CID he claimed that he witnessed COI (b)(3), (b)(6) cut blindfolds and zip ties.²² In his sworn testimony he backed off his claim that he saw four blindfolded and restrained bodies, and admitted that he personally only saw one.²⁴

c. Did COI (b)(3), (b)(6) cut the blindfold and zip tie off a dead detainee and state, "I guess we'll have to say these guys tried to escape" or words to that effect?

¹⁶ PVT (b)(3), (b)(6) claims the bodies came in on the second day of the operation (they came in on the first), that four bodies came on a single helicopter (they came on two helicopters 45 minutes apart), that the bodies were wrapped in white cloth (they were in black body bags), that their hands were bound behind (most witnesses did not see bound hands, but if bound they were most likely bound in front), that the PSD took pictures (the S-2 and S-3 took the pictures), and that two more dead detainees arrived for a total of six (there were only three dead detainees, the fourth KIA was not detained prior to his death),

¹⁷ See exhibit 13a.

¹⁸ See exhibit 13b.

¹⁹ See exhibit 13c.

²⁰ E.g. In his e-mail PVT (b)(3), (b)(6) claims that he was ordered to cut off the blindfolds and zip ties. In his sworn statement he claims he saw COI (b)(3), (b)(6) cut off four sets of blindfolds and zip ties. In his sworn testimony he says he only saw COI (b)(3), (b)(6) cut the blindfold and zip ties from one body.

²¹ See exhibit 17 and 22.

²² See exhibit 13a.

²³ See exhibit 13b.

²⁴ See exhibit 13c.

COL (b)(3), (b)(6) did cut the blindfold from the face of one detainee, but did not cut zip ties from any dead detainees.²⁵ The cut blindfold was photographed with the remains and was not removed from the body bag. COL (b)(3), (b)(6) did not state, "I guess we'll have to say these guys tried to escape" or words to that effect. Again, the only witness who claims that COL (b)(3), (b)(6) cut zip ties is PVT (b)(3), (b)(6) MAJ (b)(3), (b)(6) MAJ (b)(3), (b)(6) and CSM (b)(3), (b)(6) and others were in the vicinity of COL (b)(3), (b)(6) while the body bags were open.²⁶ COL (b)(3), (b)(6) did cut one blindfold and used the same knife to lower the blindfolds from the other bodies so that MAJ (b)(3), (b)(6) could get photos that could be used by the S-2 to identify the bodies.²⁷ It is likely that PVT (b)(3), (b)(6) saw this from a distance and combined the portion he saw with rumors he heard. He then wrote to SFC (b)(3), (b)(6) and embellished his story by claiming that he was ordered to cut blindfolds and zip ties from the dead.

d. Did COL (b)(3), (b)(6) compliment, endorse or encourage the mistreatment of detainees by saying "good job but we need more bodies" or words to that effect?

On 9 May 2006 in the TAC area, COL (b)(3), (b)(6) did not compliment, endorse or encourage the mistreatment of detainees by saying "good job but we need more bodies" or words to that effect. There is evidence that confusion about the applicable ROE was a contributing factor in the deaths of the three individuals in the boat and the man in the window. The uncontradicted testimony is that none of these individuals demonstrated hostile acts or intent prior to being engaged.²⁸ In his sworn statement to CP (b)(3), (b)(6) LT (b)(3), (b)(6) states that the, "ROE given by our chain of command was to kill every military aged male on the objective."²⁹ This understanding of the ROE is consistent with other witness statements.³⁰ In his sworn testimony CP (b)(3), (b)(6) explained that this ROE was articulated by COL (b)(3), (b)(6) at the mission rehearsal.³¹

e. Did COL (b)(3), (b)(6) have knowledge of the death of detainees on or about 10 May 06 and fail to report to higher headquarters?

COL (b)(3), (b)(6) knew of CP (b)(3), (b)(6) Commander's inquiry and appointed MAJ (b)(3), (b)(6) to conduct an AR 15-6 investigation, but made the conscious decision to keep the investigations into the deaths at his level until after he returned from leave and was briefed on the final findings and recommendations.³² This decision demonstrated poor judgment and violated MNC-I CCIR guidance, FRAGO 248, FRAGO 212 and SECDEF Policy Memo 9, dtd 9 June 2004.³³ These documents lay out the requirement to report suspected LOAC violations and refer detainee deaths to CID for investigation.

f. Was there misinterpretation/miscommunication of the ROE?

²⁵ See primarily exhibit 25.

²⁶ See exhibit 11, 17 and 22.

²⁷ All photos taken in the presence of COL (b)(3), (b)(6) at exhibit 17a and 22b.

²⁸ See exhibit 23.

²⁹ See exhibit 23b.

³⁰ See exhibit 23c - I.

³¹ See exhibit 23.

³² See exhibit 4, 21 and 25.

³³ See exhibit 28 a - c.

While outside the scope of this investigation, there is evidence that there was misinterpretation and miscommunication of the ROE. In the days leading up to Operation Iron Triangle, COL (b)(3), (b)(6) directed his staff to put together a kinetic strike package of pre-assault indirect fires.³⁴ This request was intelligence driven. COL (b)(3), (b)(6) and his staff believed the request was being supported as it was forwarded to the SECDEF. As a late change, the request was modified from an area package that included a chemical facility, to individual targets that omitted the chemical facility. As such, the division commander became the approval authority. The night before the operation, the Commanding General denied the indirect fires. Nevertheless, COL (b)(3), (b)(6) and his staff believed the initial support by Division and Corps validated their belief that they would be attacking a hostile target.³⁵

The brigade command judge advocate and commander both assert that the on scene commander has the authority to target individuals, "with direct fire weapons systems based solely on their status [as members of designated terrorist organizations]."³⁶ While this appears to be a technically correct interpretation of theater specific ROE, taken to the extreme it raises serious issues about the manner in which PID is established.

COL (b)(3), (b)(6) verbally designated all persons on Objective Murray as members of Al Qaeda, based on his assessment of the intelligence available, and previous operations at that location.³⁷ This verbal designation was not crystal clear in that some, including COL (b)(3), (b)(6) referred to Objective Murray being declared hostile.³⁸ Although garbled, this designation clearly allowed Soldiers to engage individuals on Objective Murray who did not commit hostile acts or demonstrate hostile intent. Afterwards, several Soldiers describe the "new ROE" as an order to kill all military aged males on Objective Murray.³⁹ This "new ROE" interpretation of COL (b)(3), (b)(6) designation contributed to the deaths of four military aged males on Objective Murray.⁴⁰ Neither the man in the window killed on Objective Murray, nor the three men in the boat displayed hostile acts or intent.⁴¹ Two issues are apparent – PID was not properly established and the designation was not clearly communicated.

This investigation finds that COL (b)(3), (b)(6) honestly and reasonably believed he had the authority to designate all persons on Objective Murray as members of a terrorist organization. The problem was that by designating all personnel on Objective Murray as hostile, COL (b)(3), (b)(6) in effect eliminated the requirement to PID each individual as a member of Al Qaeda. The record is clear; the Soldiers on the objective demonstrated restraint in the application of force, which they were not required to, given the

³⁴ See exhibit 21, 22 and 25.

³⁵ See exhibit 21, 22 and 25.

³⁶ See exhibit 25 and 27a.

³⁷ See exhibit 21, 23, 25 and 27a.

³⁸ See exhibit 25.

³⁹ See exhibit 23a – 1.

⁴⁰ See exhibit 23a – 1.

⁴¹ See exhibit 23.

designation of OBJ Murray as containing members of a declared hostile force by COL
(b)(3), (b)(6)

This investigation finds that there was miscommunication of the ROE. At the brigade level not all members of the staff understood the designation of Objective Murray as hostile.⁴² At the battalion level the leadership of 3-320 FA were not aware that individuals on Objective Murray had been declared hostile.⁴³ At the company level the Soldiers in C/3-187 were aware of the designation, but mischaracterized it as an order to, "kill all MAM on the objective."⁴⁴ There was also confusion between designating individuals versus a place hostile. A person cannot be targeted on status simply by being present on an objective deemed hostile by an on scene commander. Although the Soldiers limited the designation to MAM on the objective, it was beyond their capability to limit the designation to members of Al Qaeda on the objective.

⁴² See exhibit 15 and 17.

⁴³ See exhibit 4, 11 and 12.

⁴⁴ See exhibit 23a-1.

SECTION V. RECOMMENDATIONS:

a. Posing for Pictures or Maltreating Casualties

The allegation that COL (b)(3), (b)(6) posed for unofficial photos and maltreated bodies is entirely without merit. There is no need for any further action regarding this issue.

b. Endorsing or Encouraging the Mistreatment of Detainees

The allegation that COL (b)(3), (b)(6) endorsed or encouraged the mistreatment of detainees is entirely without merit. COL (b)(3), (b)(6) did not say, "I guess we'll have to say these guys tried to escape" or "good job but we need more bodies." There is no need for any further action.

c. Failure to Immediately Report Suspected Detainee Deaths

COL (b)(3), (b)(6) should be admonished for his failure to report suspected detainee deaths to his chain of command and law enforcement officials in a timely manner. While his decision to fully investigate was sound, his decision to not inform his chain of command and CID immediately demonstrated poor judgment.

d. Misinterpretation and Miscommunication of the ROE

The 3 BCT should retrain commanders, staffs and soldiers on the application of the designation of declared hostile force, and should establish procedures for the communication of this decision to the lowest level of the command. The designation does not eliminate the necessity of PID and distinction. Declarations using location-based analysis are inherently defective given that Soldiers cannot know who is on the objective until it is taken.

The differences between analyzing a request for pre-assault fires and declaring a force hostile should be reinforced. Pre-assault fires utilize area weapons and require at least division level approval. Declaring a force hostile, and engaging the force with direct fire weapons, can be approved by the on scene commander, but does not relieve Soldiers from the requirement for PID and distinction of each individual targeted.

MNC-I should re-examine its ROE to determine if modifications are required to clarify the application of positive identification, and issue clarification on the continuing requirement to PID after an on scene commander declares a force hostile.

e. On-Going Criminal Investigation

(b)(5)

(b)(5)

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SUPPLEMENTAL FINDINGS:**Background:**

On 9 June 2006, I briefed the Commanding General, MNC-I, on the findings and recommendations of this report. On 10 June 2006, the Commanding General directed me to investigate the ROE issues in more detail.⁴⁵ I was directed to determine if there were:

- problems with the 3/101 Commander's interpretation of the ROE, and
- facts or circumstances that should have caused 3/101 commander to reconsider his original ROE guidance.

The IO contacted the Commanding General, 101st Airborne Division (Air Assault), and the Commander, 3/101, to follow these new lines of inquiry. Both provided responses in writing.⁴⁶

Analysis:

The additional information provided by MG Turner and COL (b)(3), (b)(6) did not impact the original findings made at paragraph e, above. In brief, there are three main issues:

- Did COL (b)(3), (b)(6) properly declare all personnel on Objective Murray as members of a designated terrorist group?
- Did COL (b)(3), (b)(6) adequately communicate his decision?
- Were the Soldiers of 3BCT required to PID individuals on Objective Murray prior to engaging them?

Under the applicable ROE, COL (b)(3), (b)(6) did properly declare all personnel on Objective Murray as members of a designated terrorist group. The evidence is clear that COL (b)(3), (b)(6) honestly believed he had the authority and sufficient intelligence to designate all persons on Objective Murray as members of a terrorist organization. This belief is echoed by MG Turner and supported by their analysis of the ROE. Given his testimony, demeanor and the legal interpretation provided to COL (b)(3), (b)(6) by his command judge advocate, I find that COL (b)(3), (b)(6) belief was reasonable.

COL (b)(3), (b)(6) did not inform his higher headquarters about his decision to declare all persons on Objective Murray as terrorists; although there is currently no requirement to do so. COL (b)(3), (b)(6) did not adequately communicate his decision to commanders and Soldiers executing the mission. MG Turner was aware of the mission and the

⁴⁵ See exhibit 29.

⁴⁶ See exhibit 30 and 31.

intelligence assessment that supported COL (b)(3), (b)(6) request for a KSP. MG Turner was not aware of COL (b)(3), (b)(6) decision to declare all personnel on Objective Murray as members of a designated terrorist group. At battalion level, the commander and executive officer of 3-320 FA were not aware that individuals on Objective Murray had been declared hostile.⁴⁸ At company level, the members of C/3-187 were aware of the designation, but mischaracterized it as an order to, "kill all MAM on the objective."⁴⁹ There was also confusion between designating individuals versus a place hostile. This confusion arose from using the terms groups, cells, facilities, objective, and targets interchangeably. The first three terms are used interchangeably in the ROE itself. According to his testimony, this was the first time COL (b)(3), (b)(6) applied his authority to declare a force hostile. Given this, he should have clearly articulated how this declaration was to be applied by his subordinate commanders and Soldiers.

The Soldiers of 3BCT were required, under the LOW, to distinguish between combatants and non-combatants. Their mistaken belief that they were lawfully allowed to engage all military aged males on Objective Murray resulted from COL (b)(3), (b)(6) designation of all personnel on the Objective as terrorists. This misinterpretation and miscommunication of the ROE caused the members of 3BCT to falsely believe the requirement to individually PID each individual as a member of a terrorist group had been suspended with regard to individuals found on Objective Murray.

Specific Findings:

a. The 3/101 Commander's Interpretation of the ROE.

The language of the ROE contributes to the problem of minimizing the law of war requirement of distinction – the duty to distinguish non-combatants from combatants. Paragraph 3.B.3.B.4. of the TF Band of Brothers ROE, is titled "Designated Terrorists and Terrorist Groups/Cells/Facilities." The paragraph states that all are authorized objects of attack. By designating all personnel on Objective Murray as hostile, did COL (b)(3), (b)(6) eliminate the requirement to PID each individual as a member of Al Qaeda? In other words, did he relieve his Soldiers of the duty to distinguish combatants from non-combatants?

Under the law of war, COL (b)(3), (b)(6) did not possess the legal authority to suspend distinction. This should be explicit in the ROE, but is not. When engaging a person, terrorist or otherwise, with direct fires, Soldiers must positively identify that individual as a lawful target. Designating a facility (or objective) as hostile does not entitle Soldiers using direct fire weapons to lawfully target everyone in the facility (or objective) simply because they are present.

To re-emphasize the point previously made, the Soldiers on Objective Murray demonstrated restraint in the application of direct fires. They did not kill women and

⁴⁸ See exhibit 4, 11 and 12.

⁴⁹ See exhibit 23a-1.

children. They did allow men to surrender, but they did engage and kill at least one and possibly four men on the objective who did not display a hostile act or intent. They targeted these four men in accordance with their understanding of the ROE as it had been briefed to them.

b. Reconsideration of Original ROE Guidance.

During the course of the initial investigation, members of the brigade staff discussed the intelligence regarding the objective that motivated COL (b)(3), (b)(6) request a pre-assault indirect fires package. This request was ultimately denied by MG Turner less than five hours before the operation was to begin. According to COL (b)(3), (b)(6)

We went from executing a planned Kinetic Strike against a deliberate target in the designated terrorist facilities category that requires a formal CDE for air delivered or precision guided surface to surface ballistic missiles to a more general area of the ROE that deals with the underlying PID and LOAC requirements. In NO CDE areas, the Commander, 101st ABN DIV (AASLT) has delegated the authority to strike Designated Terrorists and groups/cells/facilities to the OSC level. When the KSP was denied we went back and reevaluated the ROE to ensure that we were still operating within the bounds of the ROE. The denial of the KSP did not alter the status of the personnel on the objective and their hostile designation still applied. The intelligence on the objective area convinced me beyond any reasonable certainty that the personnel located on OBJ MURRAY were hostile forces affiliated with AQ/FF.

COL (b)(3), (b)(6) understanding of the situation was in line with MG Turner's understanding. MG Turner wrote, "I am aware that the BDE CDR and the BN CDR considered the target to be a terrorist facility. I was briefed on the intel the BCT had that led to that conclusion and I agreed with them. ... I denied pre assault fires because I was concerned about collateral damage. This site contains chemical shells. Although well documented as to location, I was not willing to risk an errant strike."

Conclusion:

COL (b)(3), (b)(6) believed that his decision to declare the personnel on Objective Murray as hostile had been ratified by higher headquarters' initial concurrence with the KSP. Since the division commander denied the KSP on the basis of potential collateral damage from chemical rounds, the division commander's denial did nothing to affect COL (b)(3), (b)(6) perception that everyone on the objective was hostile, and that he had properly declared them as hostile.

Objective Murray was assaulted using this premise; however, the assault force attacked with individual and crew served weapons. These types of weapons can be employed in a manner that allows Soldiers to distinguish and engage individual targets. Dropping a bomb or firing missiles does not permit this type of individual distinction.

Apparently, CO1(b)(3), (b)(6) and his Soldiers thought that if Objective Murray could be engaged with bombs and missiles, it could be engaged in the same manner using individual and crew served weapons. MG Turner's denial of the KSP was not based on a change in intelligence. Consequently, CO1(b)(3), (b)(6) believed he properly exercised his authority as an OSC. While there is no requirement for an OSC to notify higher headquarters, this would have been a reasonable course of action.

SUPPLEMENTAL RECOMMENDATIONS:

MNC-I should re-examine the ROE to clarify the application of positive identification. The ROE should reinforce that fact that declarations using location-based analysis are likely defective in the current MNC-I AOR, because Soldiers cannot know who is on the objective until after it is taken. MNC-I should issue clarification on the continuing requirement to PID after an on scene commander declares a force hostile.

MNC-I should consider if there is a continuing need to allow on scene commanders to, "strike designated terrorists and groups/cells/facilities." If the authority continues to exist, there should be a requirement to clearly communicate this decision to the lowest level of the command. In communicating the designation, it should be stressed that the designation never eliminates the necessity of PID and distinction of individual persons when employing direct fire weapons. MNC-I should consider if "reasonable certainty" is adequate for PID of individual persons. On scene commanders should be required to notify their next higher headquarters each time they exercise their authority to target based on status rather than hostile act or hostile intent. When planning to attack a deliberate target, this notification should happen in advance.

The differences between engaging the enemy with area weapons and direct fire weapons require clarification in the ROE. Use of area weapons requires a CDE and division commander level approval. Declaring a force hostile, and engaging the force with direct fire weapons, can be approved by the on scene commander, but does not relieve Soldiers from the requirement for PID and distinction of each individual targeted.

Training materials which draw this distinction should be prepared immediately. 3BCT should retrain commanders and staffs on the application and communication of the designation of declared hostile force. 3BCT Soldiers should be trained on the requirement for distinction of each individual targeted.

In light of his honest belief in the correctness of the mission ROE, as re-enforced by his interaction with division on the KSP, I recommend that CO1(b)(3), (b)(6) admonishment, previously recommended, be expanded to include his failure to anticipate and communicate the consequences of his declaration of hostile force on Objective Murray. Given the findings of this investigation, I do not recommend any UCMJ or additional adverse administrative actions.